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Paper No. .

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MAY 22 2008

**OFFICE OF PETITIONS**

In re Application of :  
Driesner et al. : DECISION ON PETITION  
Application No. 10/021,260 :  
Filed: December 19, 2001 :  
Atty Docket No. 30014200.1018 :

This is a decision on the "PETITION TO WITHDRAW HOLDING OF ABANDONMENT" filed April 1, 2008.

The petition under 37 CFR 1.181 is granted.

The above-identified application became abandoned for failure to reply to the non-final Office action mailed June 15, 2007. This Office action set a three-month shortened statutory period for reply, with extensions of time obtainable under § 1.136(a). No reply considered received and no extension considered obtained, the above-identified application became abandoned on September 16, 2007. A Notice of Abandonment was mailed on February 28, 2008.

In response, applicant timely filed the instant petition. Applicant states that in response to the non-final Office action an amendment, with an executed certificate of mailing signed by attorney Christopher Rauch and dated (Monday) December 17, 2007, was timely filed. In support thereof, applicant submits *inter alia* a copy of the response as filed. Further, the petition is made by the attorney who signed the certificate of mailing under § 1.8.

Applicant shows that accompanying the response was a transmittal identifying the items being transmitted including an amendment, a money order for \$1,050 for the extension of time and an authorization to charge a Deposit Account any required fees. The transmittal included a certificate of mailing dated (Monday) December 17, 2007. The transmittal with the certificate of mailing states applicant petitions for extension of time for response until December 15, 2007 (Saturday) was also enclosed.

37 CFR 1.8(b) provides that:

In the event that correspondence is considered timely filed by being mailed or transmitted in accordance with paragraph (a) of this section, but not received in the U.S. Patent and Trademark Office after a reasonable amount of time has elapsed from the time of mailing or transmitting of the correspondence, or after the application is held to be abandoned, or after the proceeding is dismissed, terminated, or decided with prejudice, the correspondence will be considered timely if the party who forwarded such correspondence:

- (1) Informs the Office of the previous mailing or transmission of the correspondence promptly after becoming aware that the Office has no evidence of receipt of the correspondence;
- (2) Supplies an additional copy of the previously mailed or transmitted correspondence and certificate; and
- (3) Includes a statement which attests on a personal knowledge basis or to the satisfaction of the Director to the previous timely mailing or transmission. If the correspondence was sent by facsimile transmission, a copy of the sending unit's report confirming transmission may be used to support this statement.

Neither the transmittal nor the response were received in the Office. On instant petition, petitioner has satisfied the requirements of 1.8(b) to have the response considered timely filed by virtue of the certificate of mailing dated (Monday) December 17, 2007.

Receipt of the extension of time fee resubmitted on instant petition is acknowledged.

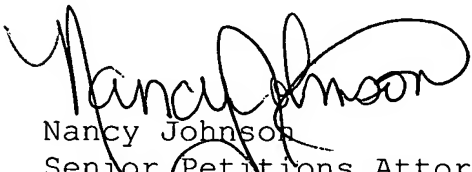
Accordingly, the Notice of Abandonment mailed February 28, 2008 is hereby **VACATED**, and the holding of abandonment is hereby **WITHDRAWN**.

The petition under § 1.181 is **GRANTED**.

No fee is required on petition under § 1.181.

Technology Center AU 2194 has been advised of this decision. The application file is, thereby, forwarded to the Technology Center's technical staff to withdraw the holding of abandonment and for the examiner to consider the response resubmitted on petition filed April 1, 2008.

Telephone inquiries specific to this decision should be directed to the undersigned at (571) 272-3219.



Nancy Johnson  
Senior Petitions Attorney  
Office of Petitions